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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 362

MEAD SERVICE COMPANY AND MEAD'S FINE BREAD COMPANY,

Petitioners,

vs.

L. L. MOORE, AN INDIVIDUAL DOING BUSINESS AS MOORE'S BAKERY

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT AND BRIEF IN SUPPORT THEREOF.

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PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT.

Your petitioners, Mead Service Company and Mead's Fine Bread Company, respectfully pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Tenth Circuit entered in this cause on June 26, 1951.

Summary of the Matter

This suit was instituted by L. L. Moore in the United States District Court for the State of New Mexico against

petitioners alleging a violation of Section 13a, Title 15, U. S. C. A. of the Clayton Act as amended by the Robinson-Patman Act. Mead's Fine Bread Company and L. L. Moore both were engaged in the bakery business and sold their products at wholesale principally to grocery stores and restaurants.

The petitioner, Mead's Fine Bread Company, is a New Mexico Corporation and had its principal office and only plant in Clovis, New Mexico. The petitioner, Mead Service Company, is a New Mexico Corporation with its principal place of business in Clovis, New Mexico. L. L. Moore operated a bakery in Santa Rosa, New Mexico.

At the trial of the case L. L. Moore, the complainant below, testified that Mead's Fine Bread Company had its plant in Clovis, New Mexico and started selling its bread in Santa Rosa, New Mexico, in January of 1948 (R. 9). He felt that there was not enough business in Santa Rosa for him and an outside bakery and after a period of a few months he obtained a building in Tucumcari, New Mexico, and told his landlord in Santa Rosa of his plan to move his plant. The landlord got some of the "fellows" together; and he, the landlord, and the others asked Moore what it would take to keep him in Santa Rosa. They asked him whether or not he would stay if all of the merchants in town agreed to patronize him. He decided that he would remain provided they support him 100 per cent. The Landlord and "fellows" prepared a petition and all except one merchant signed it "100 per cent" (R. 9-10). The petition was an agreement of every store to support the home town bakery "which was mine", "100 per cent" (R. 11). On the effective date of the boycott all but one of the merchants refused to buy bread from Mead's Fine Bread Company (R. 22-23). Moore testified that he knew about the petition,

was willing to accept its benefits and decided to take advantage of whatever benefits would arise from the petition or boycott. That it was done with his consent and for his benefit (R. 23, 30). He testified that the only way they could keep him in Santa Rosa was to deliver him all of the business. The petition had the effect of running Mead's Fine Bread Company out of town; and that he knew what the effect would be (R. 23, 30). Mead's Fine Bread Company was his only competitor (R. 29). Moore testified that he was present at the meeting when the effective date of the petition was agreed upon and attended another meeting regarding the petition (R. 33). He admitted that the petition started the price cutting, (R. 10) and that if the boycott had been successful he would have had a monopoly with the exception of one small store (R. 31). He testified that Mead's Fine Bread Company reduced the price of bread—only—and only in Santa Rosa (R. 28 & 29). That he and Mead's Fine Bread Company were competitors in a total of 69 stops or retail outlets in the Santa Rosa area (R. 44). And that there was no disturbance of price in 9 towns in the area (R. 28). When the price was reduced Mead's Fine Bread Company was able to get back into part of the outlets but did not get back into all of them (R. 44). He further admitted that there had been no price difficulties prior to the boycott (R. 22).

E. E. Corcorran testified that he was the Vice President of Mead's Fine Bread Company, and that the merchants in Santa Rosa boycotted Mead's Fine Bread Company. That the price of bread was cut to break the boycott, and that such means was the only way Mead's Fine Bread Company had of staying in the stores (R. 47-48). Every merchant told him of the petition that had been brought around to boycott Mead's Fine Bread Company. All outlets except one were lost until the price of bread was cut (R. 48).

Respondent admitted in his first brief before the Court of Appeals that at the time of the trial (over a year later) Mead's Fine Bread Company was selling bread in only eight out of the eleven outlets they had in Santa Rosa immediately prior to the boycott. In other words, the boycott was then effective in three of eleven outlets (27%).

The record conclusively shows that Mead Service Company did not perform or participate in any act complained of by Moore. For this reason references throughout necessarily refer to Mead's Fine Bread Company. For convenience reference shall be made in the singular.

The Clayton Act as amended by the Robinson-Patman Act (15 U. S. C. A. 13a) is as follows:

> "It shall be unlawful for any person engaged in commerce, in the course of such commerce, either directly or indirectly, to discriminate in price between different purchasers of commodities of like grade and quality, where either or any of the purchases involved in such discrimination are in commerce, where such commodities are sold for use, consumption, or resale within the United States or any Territory thereof or the District of Columbia or any insular possession or other place under the jurisdiction of the United States, and where the effect of such discrimination may be substantially to lessen competition or tend to create a monopoly in any line of commerce, or to injure, destroy, or prevent competition with any person who either grants or knowingly receives the benefit of such discrimination, or with customers of either of them: Provided, That nothing contained in Sections 12, 13, 14-21, and 22-27 of this title shall prevent differentials which make only due allowance for differences in the cost of manufacture, sale, or delivery resulting from the differing methods or quantities in which such commodities are to such purchasers sold or delivered: Provided, however, That the Federal Trade Commission may, after due investigation and hearing to all interested parties, fix and establish quantity limits, and

revise the same as it finds necessary, as to particular commodities or classes of commodities, where it finds that available purchasers in greater quantities are so few as to render differentials on account thereof unjustly discriminatory or promotive of monopoly in any line of commerce; and the foregoing shall then not be construed to permit differentials based on differences in quantities greater than those so fixed and established: And provided further, That nothing contained in sections 12, 13, 14-21, and 22-27 of this title shall prevent persons engaged in selling goods, wares, or merchandise in commerce from selecting their own customers in bona fide transactions and not in restraint of trade: And provided further, That nothing contained in Sections 12, 13, 14-21, and 22-27 of this title shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned."

The trial court at the close of the complaining party's testimony found that:

"The evidence up to this point clearly shows, and there is no conflict in the evidence, and from every inference that might be drawn from it, that the defendant in this case wasn't engaged in a price war generally, that it only reduced prices at Santa Rosa and did not reduce prices there until the plaintiff in this case was preparing to leave Santa Rosa because of insufficiency of business, and the businessmen of Santa Rosa, with the consent of the plaintiff, went around and circulated this petition by which the customers of the Meads Fine Bread Company along with other bakery dealers in Santa Rosa agreed that they would not purchase from the Meads Fine Bread Company, but rather I should say, they agreed to buy exclusively

> from the plaintiff in this case, thereby actually destroying the market so far as the Meads Fine Bread Company was concerned." (R. 53-54.)

The complaining party below admitted that the price reduction on the part of petitioner was made in response to the boycott.

> L. L. Moore: ". . . And when I told him about leaving, well he got up in the air and told some others and none of them wanted me to leave, and that is what started this petition, and that is what started the price cutting." (R. 10.)

The trial court found that the boycott brought about a changed condition affecting the market for and marketability of petitioners' goods, and sustained petitioners' motion for judgment.

The Court of Appeals for the Tenth Circuit affirmed the judgment of the Trial Court on two points:

1. It held L. L. Moore in *pari delicto* with the petitioner;
2. It held that the sales complained of had no effect or impact upon commerce.

This opinion appears in 184 F (2) 338.

The United States Supreme Court then granted its Writ of Certiorari and on April 20, 1951, remanded the cause to the Court of Appeals

> "for further consideration in the light of Kiefer-Stewart Co. vs. Joseph E. Seagram and Sons, No. 297, October Term, 1950, decided January 2, 1951."

The Court of Appeals on June 26, 1951, rendered its opinion remanding this cause for new trial finding:

1. That the boycott was not a changed condition affecting the market for or marketability of the petitioners' goods within the meaning of the Act; and

2. Completely reversed itself on the commerce question finding simply that Mead's Fine Bread Company was in commerce.

The petitioner contends:

1. That the boycott was a changed condition affecting the market for and marketability of the goods concerned within the meaning of the fourth proviso of the act;

2. That the purchases involved in the alleged discrimination were not in commerce within the meaning of the Act; and

3. That the complaint is not actionable because L. L. Moore's only complaint is that his only competitor, Mead's Fine Bread Company, ought not be permitted to compete with him on an equal basis.

Basis for the Supreme Court's Jurisdiction

The Supreme Court has jurisdiction of this cause by reason of Section 1254, Title 28, U. S. C. A. and Rule 38, Revised Rules of the Supreme Court of the United States.

(1) On the question of whether or not the boycott was a changed condition affecting the market for or marketability of the goods concerned, we respectfully point out to the court that the question is one of first impression. No authority has been found dealing with the interpretation of the fourth proviso of Section 13 (a) of the Act. Manufacturers and dealers are constantly and incessantly confronted with local boycotts on the part of merchants incited by local manufacturers and dealers. As a practical matter the local manufacturers and dealers are immune from punishment under loose and meaningless state laws; and if an attempt be made to apply such laws to them by the so-called foreign manufacturer or dealer, he places himself in a position of suing and subjecting his customers and pro-

spective customers to damages and criminal prosecution. The mere filing of such an action would be business suicide. The so called foreigner is thus stripped of all defenses by the decision of the Court of Appeals. He is virtually helpless to defend and at the same time preserve his property rights in the market. An examination of the words of the fourth proviso will readily reveal that the Court of Appeals was misled by the words "such as", and we respectfully refer the court to petitioner's argument.

(2) The decision of the Court of Appeals conflicts with its own prior holding on the question of commerce (184 F (2) 338). In its first opinion that court held that the purchases involved had no impact upon interstate commerce and placed no burden thereon, citing among others *Atlantic Company* v. *Citizens Ice & Cold Storage Company*, 178 F (2) 453, Certiorari denied, 339 U. S. 953, 70 S. Ct. 841. The decision on this question in the last opinion not only conflicts with its own prior opinion but with that of the 5th Circuit in *Atlantic Company* v. *Citizens Ice & Cold Storage Co.* (*supra*).

(3) The decision of the Court of Appeals conflicts with *First National Pictures, Inc.* v. *Robinson*, 72 F (2) 37, Certiorari denied, 55 S. Ct. 141, 293 U. S. 631, 79 L. E. 716, wherein the court denied the recovery where the complainant's only complaint was that his only competitor ought not to be permitted to compete with him on equal terms. Such is the case of L. L. Moore.

The Questions Presented

The questions here presented are as follows:

1. Whether or not the boycott of petitioner's products in the City of Santa Rosa comes within the fourth proviso, Section 13(a), Title 15, U. S. C. A. known as the Clayton

Act as amended by the Robinson-Patman Act which provides:

> "and provided further, That nothing contained in Sections 12, 13, 14-21 & 22-27 of this title shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or eminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned."

2. Whether or not the sales or purchases involved in this cause were in commerce within the provisions of Section 13 (a), Title 15, U. S. C. A.

3. Should L. L. Moore be permitted to prosecute a complaint against the petitioners under the Clayton Act as amended where his sole complaint is that his only competitor should *not* be permitted to compete with him on an equal basis.

Reasons for the Allowance of the Writ

It is respectfully submitted that writ of certiorari should be granted in the cause for the following reasons:

1. The complaining party, at whose instance merchants in the town of Santa Rose, New Mexico, organized the boycott in question, admitted that the boycott was the cause of the reduction in price by petitioner (R. 10). That exclusion from the market was a destruction of a market insofar as petitioner was concerned, and, we think, certainly brought about a changed condition affecting the market for and the marketability of petitioner's goods to which the fourth proviso applies. The Court of Appeals erred in limiting the application of the proviso to the classes named

and holding the outside limits to "special situations in connection with specific lots of goods which are of a perishable nature or become obsolete with the seasons and distress sales under court process or goods sold when business is discontinued in good faith." Such decision utterly ignores the subject matter of the proviso which is price changes made in response to changing conditions affecting the market for or marketability of goods. The decision completely removes the words "but not limited to" from the statute. This may be readily demonstrated by reading the proviso and omitting the words "but not limited to". This operation brings the proviso exactly in line with the Court of Appeals' decision.

To permit this decision to stand would not only thrust irreparable injury and damage upon many innocent parties but would throw the Act into a state of confusion and uncertainty that would result in endless litigation. The importance of this question cannot be over emphasized. Boycotts are used extensively by local interests to give monopolies to friends, relatives or business associates. The problem is continually confronting businessmen who attempt to do business in surrounding localities. We do not speak here of the exclusion of the first offering of a new comer to the market by reason of local pride in the home town. We are dealing with a market earned and held by the petitioner which was unlawfully raided and destroyed by a conspiracy to grant a monopoly.

It is submitted that the question is one of vital importance to all businessmen engaged in commerce.

The writ should be allowed for the reason that the purchases involved were not made in commerce and had no effect or impact thereon. The Honorable Court of Appeals has taken two diametrically opposed positions on the question in this cause alone. First, they felt that *Atlantic Co* v.

Citizens Ice & Cold Storage Co., 178 F (2) 453 (Cert. Denied) controlled; then in their second opinion, without explanation, dismissed the matter by merely stating that by reason of some sale "through outlets across the state line in Texas, it was engaged in commerce." What principle has been established which may be followed in the future by such unexplained treatment of the question? The last opinion holds by implication that it is no longer material whether the sales or purchases have an effect or impact on commerce. The last opinion and the decision in *Atlantic Co.* v. *Citizens Ice & Cold Storage Company* are in direct conflict. These decisions cannot be reconciled, and this petition should be granted in order that the matter may be placed at rest for future guidance.

The decision of the Court of Appeals is contrary to *First National Pictures, Inc.* v. *Robinson*, 72 F (2) 37, Certiorari denied, 55 S. Ct. 141, 293 U. S. 631, 79 L. Ed. 716. In that case the court denied recovery where the only complaint was that complainant's only competitor ought not to be permitted to compete on equal terms. Such is the case of L. L. Moore. He seeks to destroy competition; and if the Court of Appeals' decision be permitted to stand, such destruction is well within the realm of possibility. The granting of the writ on this ground alone is essential to the preservation of competition and prevention of monopolies.

Each of the foregoing questions are of general importance in the interpretation and understanding of the Clayton Act as amended by the Robinson-Patman Act. The confusion created by the absence of a decision hereon by this honorable court is resulting in grave injustice throughout the country. Manufacturers and dealers everywhere must constantly contend and cope with local boycotts and will now find themselves helpless at the hands of the very court that sought to protect them from unfair practices.

Wherefore, petitioners respectfully pray that a writ of certiorari be granted herein in order that the errors complained of may be corrected, and that the petitioner, Mead Service Company, be dismissed from the action.

Respectfully submitted,

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BRIEF OF PETITIONERS IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

The petition for Writ of Certiorari is brought forward on three points.

POINT I

The Honorable Court of Appeals erred in its construction of the fourth or last proviso of Article 13a, Title 15, U. S. C. A.

POINT II

The Honorable Court of Appeals erred in holding that the purchases involved were in interstate commerce.

POINT III

Where the only complaint is that complainant's only competitor ought not be permitted to compete on equal terms, such complaint is not actionable under the Clayton Act as amended.

Argument

POINT I

THE HONORABLE COURT OF APPEALS ERRED IN ITS CONSTRUCTION OF THE FOURTH OR LAST PROVISO OF ARTICLE 13A, TITLE 15, U. S. C. A.

Pertinent Part of the Act:

> "And provided further, That nothing contained in sections 12, 13, 14-21, and 22-27 of this title shall prevent price changes from time to time where in response to changing conditions affecting the market for or the marketability of the goods concerned, such as but not limited to actual or imminent deterioration of perishable goods, obsolescence of seasonal goods, distress sales under court process, or sales in good faith in discontinuance of business in the goods concerned."

Argument:

The question here presented is one of first impression.

The Court of Appeals held that the proviso "deals" with "special situations in connection with specific lots of goods which are of a perishable nature or become obsolete with the seasons or distress sales under court process or goods sold when a business is discontinued in good faith". It further states that "The exceptions are not confined specifically to those set forth but the plain language of the statute limits the exceptions to those which are "such as" or similar to those named" and held that the boycott in question was "not 'such as' or similar to the exceptions named".

The construction of the phrase is first a limiting expression followed not by one but by two contradictory expressions—"but" and "not limited to".

The word "but" in itself is contradictory (12 C.J.S. p. 858 and numerous cases cited). The word "limited" signifies "beyond which, not" (53 C.J.S. p. 887 and cases cited). By preceding the word "limited" with the negative "not", "limited" would mean without boundary. When taken together the words remove any limiting effect of the words "such as".

If the two contradictions do not neutralize the limiting effect of the words "such as" entirely, they, to some extent, dilute their limiting power. How much the Court of Appeals was unable to determine, so it removed the words "but not limited to" entirely and then construed the proviso.

Let us read it again with the words "but not limited to" removed.

> "That nothing contained * * * shall prevent price changes from time to time where in response to changing conditions affecting the market for or marketability of the goods concerned, such as * * * actual

or imminent deterioration of perishable goods, obsolescence of seasonal goods, * * *."

When so written the proviso still deals with "special situations in connection with specific lots of goods which are of a perishable nature * * *."; and "the exceptions are not confined specifically to those set forth; "and" the plain language of the statute limits the exceptions to those which are 'such as' or similar to those named". The opinion now properly construes the proviso. Congress must have included the words "but not limited to" for some purpose. There is no surplusage.

If emphasis is to be placed upon any part of the proviso, it should be placed on the subject matter which is *price changes made in response to a changed condition of a market.* Congress is here setting out a needed exception to preserve competition and prevent monopoly and at the same time be fair and just. The proviso permits price changes to enable anyone to meet and cope with changing conditions of a market over which he has no control. Thus the words "but not limited to" should be given life and a meaning in the statute.

The proviso was intended to give relief where relief was needed from the sweeping and stringent terms of the Act. It was not intended to make every discrimination unlawful, and our complex systems of business made it impossible to list every desired exception. Thus, Congress excepted price changes made in response to a changed market condition.

Had L. L. Moore chose to cut the price of bread to drive the petitioner from the market, there could be no doubt that the price could have been lawfully met. But something more sinister and subtle was selected to destroy petitioner's market and drive it from Santa Rosa. How could Mead's Fine Bread Company protect its market from such a raid? Bring a suit against its customers for violating some Anti-

Trust Law? The merchant customers ostensibly were the conspirators. Assuming such a suit had been brought by Mead's, what kind of customers would these merchants make after being sued by petitioner? Such an action would have been self-destruction. Business is built on good will, not the results of law suits. It was compelled to use the only means available to it to deal with such a violent market.

Suppose for example A is in the business of breeding, raising and marketing rabbits for table use and subject in every respect to the Clayton Act. B, a competitor, through surreptitious methods, leads the public to believe, though untrue, that A's rabbits are diseased and if eaten severe illness would ensue. Assuming then that A awakens one morning and finds himself without a market because of the acts of B, except for a small segment of his market in another state too far away to learn of the fabrication. Under the Court of Appeal's decision A could do one of two things: (1) submit to the desire of B and go out of business, or (2) reduce his prices in the affected area sufficiently to entice the public to try his product again and stand B's suit under the Clayton Act for treble damages. The reduction of price would be a discrimination against the mentioned distant market and would not be made in response to a changed market condition "such as or similar to those (exceptions specifically) named" under the authority of the leading case on the subject, *Moore* v. *Mead's Fine Bread Company*. A, of course, finds great comfort in the fact that he can at least sell out his business without being sued, because it would be a "special situation in connection with specific 'lot of goods', and a discontinuance of business". And what about B? He was at the sale, bought everything A had for what the bank had against it.

Does the Act now preserve competition and prevent monopoly under the construction of the Court of Appeals?

Or does it become an instrumentality of those seeking to destroy competition? The answer is obvious.

In this case petitioner had a market that it had bought with industry and the quality of its products. It had a property right in that market, incorporeal perhaps, but a property right just the same. The proviso gave the petitioners the right to cope with changes in their market, and the theft or utter destruction of the market occasioned by the boycott was a changed condition affecting the market for petitioner's goods. How far petitioner could go to meet this situation is another question. Perhaps it would be for the jury to determine in passing upon the issue of whether or not the price cut was made in response to the boycott or for the purpose of destroying or injuring competition. However, because of the admissions of L. L. Moore the trial court properly held, as a matter of law, favorable to petitioners.

The proviso is written in a manner to include anything that falls fairly within its subject matter, which is price reduction made in response to changed market conditions. Any other interpretation would do violence to the act and, as in this case, place in the hands of the ruthless the power to destroy competition and foster monopoly.

Every business subject to the provisions could be driven from market after market by the use of the boycott or other devious methods. Such is not in keeping with the purpose of the Act to preserve competition and prevent monopoly.

It is respectfully submitted that the Honorable Court of Appeals has misinterpreted the proviso and that certiorari should be granted.

Point II

THE HONORABLE COURT OF APPEALS ERRED IN HOLDING THAT THE PURCHASES INVOLVED WERE IN INTERSTATE COMMERCE.

Briefly the facts on this point are that the petitioner, Mead's Fine Bread Company, is a New Mexico Corporation with its only plant in Clovis, New Mexico, where it baked its bread and other products. It delivered and sold its goods wholly within the State of New Mexico, the only exception being sales in Texico-Farwell which is a small town on the line between Texas and New Mexico 10 miles East of Clovis. The town is contiguous and is separated only by the imaginary state line. There were some three or four stores on the Texas side of the town that were customers of petitioner on the date of the boycott. Santa Rosa is a small town approximately 60 miles inland from the East line of New Mexico. Bread was delivered daily by petitioner's truck to Santa Rosa which passed over a route which lay wholly within the state. When the merchants of Santa Rosa refused to buy petitioner's products, petitioner reduced the price of its bread only, *and only*, in the town of Santa Rosa. Prices on bread remained unchanged everywhere outside that town even though petitioner and L. L. Moore were direct competitors in numerous stores in the surrounding communities.

In considering the question presented, it is believed that no dispute can arise over the proposition that the problem ultimately resolves itself to the question of whether or not the particular transaction or matter had effect upon commerce. *A. L. A. Schechter Poultry Corporation* v. *U. S.*, 55 S. Ct. 837 p. 850, 295 U. S. 495, 79 L. Ed. 1676.

Strictly speaking the petitioner was engaged in commerce insofar as the sales, however few, on the Texas side of the line were concerned. The problem is, did the sales at Santa

Rosa have any effect on interstate commerce? The situation presented is wholly local in character. It did not reach outside the town of Santa Rosa even though the parties herein were competitors in other towns and communities in that area. Further, the price reduction was made on bread alone. All other products remained unchanged.

Let us then apply the facts to determine whether or not the Texas purchasers suffered by reason of the price reduction in Santa Rosa.

The Texas Purchasers continued to pay the normal price they had been paying all the time. Certainly no detriment resulted to them. Perhaps there was a benefit to the citizens of Santa Rosa, but the benefit received was only an incidental result of the act of reducing the price of bread. Now, had the benefit to the Santa Rosa people been the purpose of the reduction, it would have been made to the detriment of Texas purchasers. Then it could be reasoned that the price reduction burdened commerce to some extent, because it would have been done to harm those being served by interstate commerce. But, such is not the instant case. L. L. Moore concedes that the petition or boycott caused the reduction in price (R. 10). Therefore, since the price reduction was nothing more than a defensive measure to preserve a local market without reflection or burden on the Texas commerce, the matter here involved is entirely local in character and not covered by the Act.

It is submitted that the matters complained of are not covered by the Act for another reason. There was no intent on the part of Mead's Fine Bread Company to restrain or burden commerce or to monopolize any part of it. Where there is an absence of intent and

> "the objectives are limited to intrastate activities; the fact that there may be an indirect effect upon interstate commerce does not subject the parties to the federal statute, notwithstanding its broad provisions."

(Citing numerous authorities.) *A. L. A. Schechter Poultry Corp.* v. *U. S.*, 55 S. Ct. 837 at 850, 295 U. S. 495, 79 L. Ed. 1676.

Petitioner's "objective" was nothing more than to preserve its market in Santa Rosa. That objective did not at any time pass beyond its boundaries. The absence of intent and the local nature of its objective removes this case from the Act.

The dispute here involved was a local matter and was confined to a local area with no resulting effect, burden or restraint upon commerce. It is therefore submitted that the Honorable Court of Appeals erred in its determination of the question and that certiorari should be granted.

Point III

WHERE THE ONLY COMPLAINT IS THAT COMPLAINANT'S ONLY COMPETITOR OUGHT NOT BE PERMITTED TO COMPETE ON EQUAL TERMS, SUCH COMPLAINT IS NOT ACTIONABLE UNDER THE CLAYTON ACT AS AMENDED.

The facts bearing on this point are simply that L. L. Moore did not believe that he could make money in his bakery business if he had to compete with the petitioner in Santa Rosa on any basis. Delivery of a monopoly was a "Sop to Cerberus" to insure his remaining in Santa Rosa. The boycott was selected to drive Moore's only competitor out of town.

The avowed purpose of the Clayton Act as amended is to preserve competition by protecting it from practices which may lessen it or tend to create monopolies. *Judson L. Thomason Mfg. Co.* v. *Federal Trade Commission*, 150 F (2) 952, at 955, certiorari denied 326 U. S. 776, 66 S. Ct. 267, 90 L. Ed. 469. The avowed purpose of the boycott and the present action was to eliminate competition and foster monopoly.

The complaint here is nothing more than a complaint that petitioner should not be permitted to compete with him. First he attempted to eliminate it by excluding it from the market, and, when that failed, he chose to extract damages that would spell bankruptcy to petitioner.

The point above as stated is mild. Moore did not want competition on any basis, even or uneven. But, construing his action in its most favorable light, he did not want his only competitor to compete with him on an equal basis. The complaint is not actionable under the Act. *First National Pictures* v. *Robison*, 72 F (2) 37 at 40, certiorari denied, 55 S. Ct. 141, 293 U. S. 631, 79 L. Ed. 716.

Conclusion

It is respectfully submitted that writ of certiorari should be granted in order that the erroneous conclusions of the Honorable Court of Appeals may be corrected and in order that the Clayton Act as amended may not be used to destroy competition and foster monopoly.

Wherefore, petitioners pray that Writ of Certiorari be granted.

Respectfully submitted,

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